Supreme Court, U.S.
FILED

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OFFICE OF THE CL

No. 97-8926

In The

Supreme Court Of The United States

October Term, 1999

Jim M. McCollum,
Petitioner,

v.

United States of America,
Federal Aviation Administration, et al
Respondents.

On Petition For Writ of Certiorari To The
U. S. Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Jim M. McCollum, Pro Se
1099 Mount Water Lane
Lawrenceville, GA 30043
770 682 7099

26pp

QUESTIONS PRESENTED FOR REVIEW

STATEMENT: Petitioner, Jim M. McCollum, while a Federal employee for almost thirty-seven years submitted a request for a compassionate reassignment through government channels to his Superior in another State. The request was submitted at the suggestion of his Office manager during counseling. Mr. McCollum offered to pay his own moving expenses in an effort to gain approval.

Mr. McCollum's request was prevented from reaching his Superior by one of the named Defendants in this action. It was returned without Mr. McCollum's knowledge to his Office manager, the other named Defendant, who then led him (McCollum) to believe that his request for reassignment was disapproved by the Superior to whom it had been addressed.

QUESTIONS:

1. Should Petitioner's letter requesting a compassionate reassignment be considered a personal act and thus not protected by the First Amendment, although it was written at the suggestion of his Office Manager, and was in accordance with accepted policy of the Federal government?

2. Was Petitioner's right to free speech violated when his Office manager gave him a memo leading him to believe the disapproval of his request came from his Superior, when in fact it did not?

3. Did the District Court err by failing to allow Petitioner's Motion for Judgment by Default when none of the Defendants responded to the properly served summons?

4. Did the District Court misinterpret Petitioner's Complaint to be an employment action and not strictly a First Amendment violation although Petitioner's employment was never an issue?

5. Did the District Court and the Appeals Court improperly dismiss under the principal of *res judicata* when the case under appeal was filed prior to the decision in the previous case, with the subsequent case being filed in order to make corrections and additions as indicated by Defendants' attorney due to Statute of Limitations considerations?

6. Did the District Court properly consider how the malicious acts by both named Defendants affected the Petitioner's free speech rights when they conspired against him by preventing his letter requesting a compassionate reassignment from reaching it's intended recipient? 18 USC 241, 42 usc 1983.

7. Why did the Appeals Court deny the Petition for Rehearing when the Judgment issued by the Appeals Court on August 18, 1998, contained numerous errors which were outlined in the Petition for Rehearing such as referring to Petitioner McCollum several times by the name of "Hayes"? (See page 6).

LIST OF PARTIES TO PROCEDURE:

Jim M. McCollum, Petitioner, v. USA, et al.

Supreme Court Judges:
Rehnquist, Ginsburg, Souter, Thomas, Breyer, Scalia, Stevens, O'Connor, and Kennedy

U.S. Court of Appeals for the Eleventh circuit:
Judges Hatchett, Tjoflat, and Edmondson

U.S. District Court for Northern Georgia, Atlanta: Judge Julie E. Carnes

U.S. Attorney for the Northern District, Atlanta: David Wright

TABLE OF CITED AUTHORITIES:

First Amendment, U.S. Constitution: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise therefore; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

UNITED STATES CODE:
Title 18, Chap. 13, Sec. 241, Conspiracy Against Rights:
If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the constitution of the United states, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured. They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, of an attempt to kill, they shall be fined under the title of imprisoned for any term of years or for life, or both, or may be sentenced to death.

Title 42, Chap. 21, Sec. 1983, Deprivation of Rights:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State of Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable toe the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. for the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

RES JUDICATA:

Rule: A final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

JURISDICTION: The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

Petitioner petitioned for rehearing on 12-5-98.

OPINIONS BELOW:
PETITION FOR REHEARING denied - DEC 14, 1998.
Judgment of the Court of Appeals dated 8-18-98.
Judgment of the U.S. District Court, 7-17-97.

CITED AUTHORITIES:
First Amendment, U.S. Constitution.

United States Code:
18 U.S.C. 241 42 U.S.C. 1983

Res judicata

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STATEMENT:

Petitioner McCollum had been serving in an overseas location with the Federal Aviation Admin.(FAA) when he was informed that his supervisory position was to be abolished during an office reorganization. He was asked by the office of Ted McIlwain (later to be named one of the Defendants) to accept a voluntary downgrade to a non-supervisory position and remain in Germany to continue his same duties and functions.

Petitioner McCollum declined to volunteer since he had worked many years to earn his supervisory position, expecting instead to be returned to his previous duty station as was FAA policy. Afterall, no one was reassigned to a duty station that was not their previous location or to a location of their choice during Petitioner's almost six years of duty overseas.

Instead of being reassigned to Atlanta, Georgia, his previous assignment, Petitioner McCollum was reassigned to the least desirable location within the organization. Additionally, Petitioner was not allowed to transfer in the normal manner, being denied pre-departure briefing, physical exam, counseling, and any request regarding his wishes in accordance with FAA Regulations, Policies, and Orders.

Upon reporting to Atlantic City, New Jersey, Petitioner McCollum found that he had no team to supervise, no duties, or area of responsibility. Petitioner was not well

received since most new arrivals are there because no other office would accept them.

Petitioner McCollum stayed for five months and had absolutely no duties assigned, not even to sharpen pencils or clean-up.

After discussions with his supervisor, and his office manager who suggested that he do so, Petitioner McCollum decided to request a compassionate reassignment, offering to pay his own expenses in an attempt to save his FAA career.

Petitioner McCollum submitted a letter through Government channels detailing reasons for his request. A copy of the letter is attached. The letter was directed through Defendant McIlwain's office then to the Office of the Director who was the ultimate decision-maker. However, Defendant McIlwain did not allow Petitioner's letter to reach the Director, but instead returned it to Defendant Quirk, the Atlantic City office manager, who did not inform Petitioner that his letter was not going to receive the attention of the Director.

Petitioned McCollum informed his office manager that he was going to have to retire if he did not get a response soon since he could not afford to stay in New Jersey while trying to keep his house in Atlanta, Georgia. Since Defendant Quirk did not inform him differently, Petitioner McCollum thought the Director was considering his request.

Finally, Defendant Quirk gave Petitioner a memo which denied his request, while letting him

believe the decision was from the Director.

Sometime after retirement and return to Atlanta, Petitioner McCollum found his letter of request for compassionate reassignment in the back of the office file folder that had been returned to him. Attached to it was a stick-pad note from Defendant McIlwain to Quirk, which stated in part "I don't feel comfortable sending this up to Bill (the Director) for signature." It was at this point that Petitioner understood why his life had seemed to be going wrong.

What could Defendant McIlwain's comfort have to do with Petitioner's request for a compassionate reassignment, unless this was the final act of his punishment campaign against Petitioner?

REASONS FOR GRANTING THE WRIT:

Petitioner McCollum respectfully prays that a WRIT OF CERTIORARI be granted to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit.

Petitioner McCollum, a Federal employee, wrote a letter upon the suggestion of his office manager, requesting a compassionate reassignment. Requests of this nature are an accepted practice within all realms of military and civilian employment.

Although Petitioner's letter pertained to the wishes of an individual, it should not have been considered personal or private conversation and thus not protected by the First Amendment of the Constitution since it was offered in accordance with accepted practice within the Federal government. The Court has indicated that a Federal employee's speech may be protected as relating to matters of public concern even in the absence of any effort or intent to inform the public.

It becomes public concern when accepted and condoned practices such as requesting reassignments might be eliminated if the employee is prevented from speaking out on such matters.

Afterall, this is basically the only way a government employee has to communicate their wishes and their needs to their Superiors. Hundreds, and perhaps thousands, of such requests are submitted every year. To allow

intermediate supervisors to prevent employees letters from reaching the parties addressed should not be allowed. The Petitioner knows personally of two such cases occurring in his office while assigned overseas. Both cases were honored by the FAA.

The decision by District Court Judge Julie Carnes to dismiss this case (Civil Action 1:97-CV-983A) states in part "that the plaintiff does not have a First Amendment claim as a result of defendants' employment action." This decision appears flawed in so far as there was no "employment action" involved, only a request for reassignment.

Another discrepancy, outlined in the PETITION FOR REHEARINS, was the application of the principal *res judicata* in this case as inappropriate. The rule of law being that a plaintiff who has prosecuted one action against a defendant and obtained a valid final judgment is barred by principle of *res judicata*, from prosecuting another case against the same defendants.

However, the case under appeal (Civil Action 1:97-983-JEC) was filed April 15, 1997, to correct issues brought forth by the attorney for the Defendants in the previous case. Final judgment for that case (Civil Action 1:96-CV-1962-CC) had not been made until May 13, 1997, thus the principal of *res judicata* should not have been considered applied.

Furthermore, the judgment issued by the Appeals Court contained several errors that

should have allowed the PETITION FOR REHEARING. Petitioner McCollum was referred to as "Hayes" four times in the judgment. An error of this nature must cast doubt upon the document as a whole, since there is no party to this action by the name of Hayes.

Actions such as those by the Defendants in this case should not be allowed. They have effectively ruined the Petitioner's retirement years.

Almost everyone looks forward to retirement, but on their own terms, not being caused to retire years ahead of time by the vindictive acts of those above them.

I also had looked forward to retirement, even so far as to what I would I would say to my wife when it came..."The best is still ahead." I can't say that now since I have retired more than eight years earlier than I had planned.

CONCLUSION:
For the reasons set forth above, a WRIT OF CERTIORARI should be granted to review the judgment and opinion of the U.S. Court of Appeals in this matter on the record

Date: March 14, 1999
Respectfully submitted,



JIM M. MCCOLLUM
1099 Mount Water Lane
Lawrenceville, GA 30043
770 682 7099

APPENDIX

ORDER, U.S. District Court.....8

JUDGMENT, U.S. District Court.....9

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PER CURIAM, U.S. Court of Appeals.....12

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DENIAL, REHEARING, U.S. Court or Appeals.....17

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FILED IN CHAMBERS
7-15-97

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JIM M. MCCOLLUM,	:	
Plaintiff	:	
v.	:	No. 1:97-CV-983A
UNITED STATES OF AMERICA et al.,	:	
Defendants	:	

ORDER

The above entitled action is presently before the Court on Defendants' Motion to Consolidate And Transfer 1:96-cv-1962-CC [4] and Defendants' Motion to Dismiss [5]. The Court notes that the Honorable Judge Clarence Cooper's case 1:96-cv-1962-CC was terminated May 12, 1997 and Judgment entered on May 13, 1997 [10] (copy of docket sheet attached).

IT IS HEREBY ORDERED that Defendants' Motion To Consolidate [4] is DENIED AS MOOT. Defendants' Motion To Dismiss [5] is GRANTED. The claim before this Court is the same claim filed before, and dismissed by Judge Cooper. Thus, under principles of *res judicata*, this Court agrees with Judge Cooper that plaintiff does not have a First Amendment claim as a result of defendants' employment action.

SO ORDERED, this 15 day of July, 1997.

"s/Julie E. Carnes"
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JIM M. MCCOLLUM,	:	
Plaintiff,	:	CIVIL ACTION FILE
	:	NO. 1:97-cv-983-JEC
vs.	:	
	:	
USA, et al,	:	
Defendant.	:	

JUDGMENT

This action having come before the court, Honorable Julie E. Carnes, United States District Judge, for the consideration of Defendant's motion to dismiss, and the court having granted said motion, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendants, USA, FAA, Ted McIlwain, and Robert Quirk recover cost of this action, and the action be, and the same hereby, is **dismissed.**

Dated at Atlanta, Georgia, this 17th day of July, 1997.

LUTHER D. THOMAS
CLERK OF COURT

By: "s/Dale S. Howard"
Deputy Clerk

Prepared, Filed, and
Entered in the Clerk's
Office: July 17, 1997

United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
August 18, 1998

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

97-8926 MCCOLLUM v. USA

Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to Rule 36 of the Federal Rules of Appellant Procedure. Fed.R.App.P. 39, 40 and 41, and the corresponding circuit rules govern costs, petitions for rehearing and mandate, respectively.

To be timely, a petition for rehearing or a suggestion of en banc consideration must be received in the clerk's office within twenty-one (21) days of the date of this opinion and judgment, except that: in CIVIL cases in which the United States or an agency or officer thereof is a party, the time within which *any* party may seek rehearing shall be FORTY-five (45 DAYS) after entry of judgment. See Fed.R.APP.P. 40(a). No additional time for service by mail is permitted. See 11th Cir. R. 40-2.

If attorney's fees on appeal are authorized by law they must be sought by filing a petition for attorney's with this office within fourteen (14) days of the date of this letter. DAVIDSON v. City of Avon Park, 848 F.2d 172, 174 n.4 (11th Cir., 1988).

Pursuant to Fed.R.App.P. 39, costs to be taxed against Appellant.

Sincerely
THOMAS K. KAHN, Clerk

By: "s/Cheryl L. Smith"
Deputy Clerk

Encl.
cc: Jim M. McCollum, Pro Se
David Wright

P.S. Order Enclosed

(DO NOT PUBLISH)
FILED U.S. COURT
OF APPEALS AUG 18 1998

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 97-8926
Non-Argument Calendar

D.C. Docket No. 1:97-CV-0983-JEC

JIM M. MCCOLLUM,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
FEDERAL AVIATION ADMINISTRATION, et al

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(August 18, 1998)

BEFORE HATCHETT, Chief Judge, TJOFLAT and
EDMONDSON, CIRCUIT JUDGES,

PER CURIAM:

Proceeding without counsel, appellant Jim McCollum challenges the district court's dismissal of his complaint. Pursuant to Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971), McCollum sued appellees United States, the Federal Aviation Admin.(FAA), supervisor Robert Quirk and manager Ted McIlwain, claiming a violation of his First Amendment rights stemming from McIlwain's and Quirk's failure to forward McCollum's letter request for reassignment to an FAA decision-maker. The District Court dismissed McCollum's claim, holding that res judicata barred it because he had already pursued the same claim in a former federal lawsuit that resulted in final judgment in favor of appellees.

On appeal, McCollum argues that the district court erred in granting appellees' motion to dismiss on the basis of res judicata because the present lawsuit -- a correct version of the former one -- deserves more consideration. We review the district court's application of res judicata de novo, and its denial of default judgment for abuse of discretion. See NAACP v. Hunt, 891 F.2d 1555, 1560 (11th Cir. 1990); Wahl v. McIver, 773 F.2d 1169, 1174 (11th Cir. 1985).

Our review of the complaints in both lawsuits, the judgment and order in the former lawsuit, the district court order in the present lawsuit, and the appellate briefs reveals no reversible error. The only real difference between Hayes's present and former lawsuits is the addition of the United States as a party. For purposes of res judicata,

however, this variation is inconsequential because the United States enjoys privity with the other appellees. See Hart v. Yamaha-Parts Distributors, INC., 787 F.2D 1468, 1472 (11th Cir. 1986); Boone v. Kurtz, 617 F.2d 435, 436, (5th Cir. 1980).

Hayes default judgment argument is equally flawed. Because the district judge in the present lawsuit agreed with the district judge in the former lawsuit that Hayes "does not have a First Amendment claims as a result of [appellees'] employment action[,]" Hayes did not "establish a claim or right to relief by evidence satisfactory to the court." Fed. R. Civ. P. 55(e) (special rule for default judgments against "the United States of America or an officer or agency thereof"). Additionally, given the existence of the nearly-identical former lawsuit, "exceptional circumstances that would justify entry of default judgment [were] not present[]" before the district court. Wahl, F.2d at 1174. For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
AUG 18 1998

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No 97-8926
Non-Argument Calendar
District Court Docket No. 1:97-cv-0983

JIM M. MCCOLLUM,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
FEDERAL AVIATION ADMINISTRATION,
et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern district of Georgia

Before HATCHETT, Chief Judge, TJOFLAT and EDMONDSON, CIRCUIT JUDGES.

J U D G M E N T

This cause came to be heard on the transcript of the record from the United States District Court for the Northern District of

Georgia, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of said District Court in this cause be and the same is hereby AFFIRMED;

IT IS FURTHER ORDERED THAT the plaintiff-appellant pay to the defendants-appellees, the costs to be taxed by the Clerk of the Court.

Entered: August 18, 1998
For the Court: Thomas K. Kahn, Clerk

By: "s/Mary Davidson
Deputy Clerk

ISSUED AS MANDATE: DEC 30 1998

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 14 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 97-8926

JIM M. MCCOLLUM, Plaintiff-
Appellant,
versus

UNITED STATES OF AMERICA,
FEDERAL AVIATION ADMINISTRATION,
TED MCILWAIN, Office of
Aviation System Standards, (FFA-80)
ROBERT QUIRK, Office of Aviation
System Standards (FFA-FIFO), Defendants-
Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia

BEFORE: HATCHETT, Chief Judge, TJOFLAT and
EDMONDSON, Circuit Judges.

PER CURIAM: The petition(s) for rehearing filed
by appellant Jim M. McCollum is denied.

ENTERED FOR THE COURT:

"S/Joseph W. Hatchett"
UNITED STATES CIRCUIT JUDGE

SUBJECT: REQUEST FOR COMPASSIONATE REASSIGNMENT

TO: DIRECTOR OF AVIATION SYSTEM STANDARDS, AVN
THRU: MANAGER, AIRSPACE ASSURANCE DIVISION
THRU: MANAGER, ATLANTIC CITY FLIGHT INSPECTION AREA OFFICE (FIAO)

FROM: JIM M, MCCOLLUM, ATLANTIC CITY FIAO
AFTER A RECENT CONVERSATION WITH THE MANAGER OF THE ATLANTIC CITY FIAO, AND WITH MY SUPERVISOR, I HAVE DECIDED TO REQUEST A COMPASSIONATE REASSIGNMENT IN AN ATTEMPT TO SAVE MY FAA CAREER.

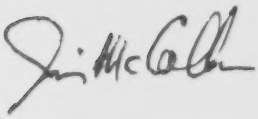
AS A RESULT OF THE FRANKFURT FIAO REALIGNMENT, I HAVE BEEN REASSIGNED TO THE ATLANTIC CITY FIAO, NOT BACK TO ATLANTA, GEORGIA, AS I HAD BEEN LED TO BELIEVE I WOULD BEFORE ACCEPTING MY OVERSEAS ASSIGNMENT. NOW I FIND THAT I AM HAVING A VERY DIFFICULT TIME MANAGING TO PAY MY SON'S COLLEGE EXPENSES AT THE WOODRUFF ARTS CENTER IN ATLANTA.

SINCE BEING TRANSFERRED TO ATLANTIC CITY, MY WIFE HAS BEEN UNABLE TO FIND SUITABLE EMPLOYMENT. SHE HAD WORKED IN OUR PREVIOUS LOCATION, AND HER INCOME WAS CRUCIAL. SHE ALSO HAD A VERY ACTIVE SOCIAL LIFE AND IS UNHAPPY HERE AND BECOMING VERY DEPRESSED.

DURING DISCUSSIONS WITH MR. QUIRK, OFFICE MANAGER OF THE ATLANTIC CITY FIAO, I TOLD HIM THAT I WOULD LIKE TO RETURN TO THE ATLANTA, GEORGIA, FIAO AND THAT I WOULD PAY MY OWN TRAVEL EXPENSES. MY WIFE COULD RETURN TO HER OLD JOB, AND MY SON COULD LIVE AT HOME WHILE HE FINISHES COLLEGE.

MY NEXT CONSIDERATION WOULD BE A TRANSFER TO OKLAHOMA CITY TO POSSIBLY BE ASSIGNED TO THE NATIONAL FLIGHT PROCEDURES BRANCH, OR TO BE ASSIGNED TO THE FAA HEADQUARTERS IN WASHINGTON, D.C. WHERE MY WIFE HAS ALSO HAD JOB OFFERS AS A RESULT OF HERE EMPLOYMENT WITH THE DIPLOMATIC COURIER SERVICE IN FRANKFURT, GERMANY.

I HAVE HAD MANY GOOD YEARS WORKING FOR THE U.S. GOVERNMENT, AND HATE THE THOUGHT OF BEING FORCED TO RETIRE BEFORE I'M READY, BUT I MAY HAVE TO SEEK OTHER EMPLOYMENT, WHICH COUPLED WITH MY WIFE'S INCOME, COULD PAY FOR OUR SON'S REMAINING COLLEGE EDUCATION.



Robert, 6-25-93
I don't feel comfortable sending this up to Bill for signature. I think that action can be taken to relieve this matter by the employer. Let me know your thoughts. Ole Ted

[Defendant's stick-pad note]

Plaintiff's
Attachment 1